

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0607P

Withholding Tax

For Calendar Years 1994, 1995, and 1996

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated November 18, 1997 protested the penalty assessed for failure to add back to ordinary income the Michigan Single Business Tax. The taxpayer had deducted on each 1120S the MSBT. Taxpayer is registered with the Indiana Department of Revenue to deduct and remit withholding taxes. Taxpayer requested a waiver of penalty on its withholding taxes for all years of the audit because there was no willful intent to avoid paying these taxes but a difference in interpretation of what was subject to tax.

Audit assessed withholding tax on the S Corporation for the MSBT it deducted.

I. Tax Administration – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in reporting and remitting trust tax.

Upon audit it was discovered that the taxpayer failed to add back the MSBT to its IT20S return as required by 45 IAC 3.1-1-8. The withholding requirements for S Corporations are addressed in 45 IAC 3.1-1-109 and the filing of S Corporation returns is addressed in 45 IAC 3.1-1-67

Taxpayer states there was no willful intent to avoid paying these taxes but a difference in interpretation of what was subject to tax.

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Indiana Code Section 6-3-1-3.5 (b)(3) required the addback of taxes based on or measured by income and levied at the state level. MSBT is levied at the state level and is measured by income, therefore, MSBT is a required addback.

The department finds no reasonable cause exists, therefore, the request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.